THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.24270 of 2005

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Dated:28.11.2005

Between:

M. Jagannath, S/o. Satyanna,
R/o. D.No. 139-8, Old Busstand, Yemmiganur, Kurnool District.

..... PETITIONER

AND

The Government of Andhra Pradesh, Represented by its Principal Secretary, Revenue (Assn.I) Department, Secretariat, Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.24270 of 2005

ORDER:

The petitioner filed the instant writ petition seeking a writ of Mandamus declaring the action of the respondents in not considering the request of the petitioner for regularization and issuance of patta in respect of the site of Ac.0.3 cents in Survey No.308-B of Yemmiganur Village and Mandal, Kurnool District, over which the petitioner raised a shed, as illegal and arbitrary, and for a consequential direction to the respondents to regularize the occupation.

The case of the petitioner, in brief, is as follows. The petitioner made a representation to the Principal, Government Junior College, Yemmiganur, seeking permission to run canteen for the convenience of the students and staff of the College. The Principal permitted to run the canteen under self-employment scheme. The petitioner obtained loan from the State Bank of India. On the recommendation of the Principal, the Executive Engineer, Roads and Buildings Department granted permission to erect a shed to run the canteen on the Government site in the road margin in Survey No.308-B in 1976. Thereafter, the petitioner raised a permanent

shed, established a canteen and has been running the canteen for the welfare of the general public as well as the students and staff of the College, duly paying the requisite rent to the Roads and Buildings Department. In 1987, the petitioner made an application to the respondents seeking alienation of the land on a nominal cost, in vain. Therefore, the petitioner filed W.P.No.15865 of 1990 before this Court. This Court disposed of the writ petition on 15.11.1990 directing the respondents to consider the representation of the petitioner for alienation. The second respondent did not consider the representation in spite of reminders. Even after the Government issued orders in G.O.Ms.No.3250, dated 24.07.1990, permitting regularization of illegal occupations, the petitioner's application was not considered. Therefore, he again filed W.P.No.10510 of 1992. The same was also disposed of by this Court on 24.08.1992 directing the respondents to consider his representation for regularization. Thereafter, the second respondent issued Memo No.4124/86 directing the petitioner to appear for enquiry. The petitioner appeared and produced the necessary material. However, by order dated 19.10.1992, the second respondent rejected the request for regularization on the ground that the land is earmarked for construction of shopping complex in S.C.Corporation. Aggrieved by the same, the petitioner approached the Special Commissioner for Land Revenue, who dismissed the appeal on 19.12.1996. The petitioner, thereafter, preferred a revision petition before the Government of Andhra Pradesh under Section 12(1) of the Andhra Pradesh Land Encroachment Act, 1905, and the same is pending. It is alleged by the petitioner that he submitted another application on 14.03.1999 seeking regularization in accordance with the orders of the Government in G.O.Ms.No.508, dated 20.10.1995. The same was disposed of. In the meanwhile, on 08.11.2005, the staff of the fourth respondent threatened to demolish the shed and dispossess the petitioner forcibly. Hence, he filed the present writ petition.

At the stage of admission itself, the learned Assistant Government Pleader for Revenue (Assignments) after getting instructions, filed a counter affidavit on behalf of the respondents. It is stated that the petitioner is not running canteen and that in the land admeasuring Ac.0.02½ cents the petitioner raised a hut and used it as fruit godown and for fruit business. It is further stated that in accordance with G.O.Ms.No.508, dated 20.10.1995, the land which is being used for commercial purpose cannot be regularized. The said Government Order is intended for regularization of occupation for residential houses and therefore, the request for regularization was rejected. It is further stated that the Executive Engineer, Roads and Buildings, by proceedings dated 10.09.1986 cancelled the permission granted earlier for occupation of the road margin, and therefore, the petitioner is not entitled for any orders as prayed for. According to the counter affidavit, in the revenue records the land is shown as belonging to Zilla Parishad and the petitioner as the encroacher of the land. The learned Standing Counsel for the fourth respondent on instructions submits that the allegation that the staff of the fourth respondent tried to demolish the petitioner's hut is not correct and the writ petition is filed on a mere apprehension.

The learned Counsel for the petitioner strenuously contends that when the petitioner's revision petition is pending before the Government, it is improper for the

authorities to threaten to demolish petitioner's hut and dispossess him without following due process of law. **Per contra,** the learned Assistant Government Pleader for Revenue (Assignments) submits that the petitioner has occupied road margin initially with the permission of the authorities. Subsequently, when the Roads and Buildings Department cancelled the permission, he encroached upon the land and raised hut for fruit business, and therefore, he is not entitled to seek regularization in accordance with G.O.Ms.No.508, dated 20.10.1995.

The counter affidavit is served on the petitioner a week ago, but no reply affidavit is filed. Therefore, the counter averments stand unrebutted. Further, the permission granted to the petitioner to occupy the road margin for the purpose of raising hut was already cancelled in 1986, but unfortunately, the petitioner still continued to occupy the road margin, especially when the land is intended for different purpose.

Therefore, it will be in the interest of justice to direct the first respondent to dispose of the petitioner's revision petition filed against the orders of the Special Commissioner, Land Revenue, dated 19.12.1996, if the same is still pending. If the revision petition is already disposed of, it shall be open to the respondents to take appropriate action for eviction of the petitioner, especially when permission granted to him to occupy the road margin is already cancelled.

The Writ Petition, with the above observation, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

28.11.2005

vs